REMARKS

By this amendment, claims 1-16 are pending, in which claims 3 and 14 are currently amended. No new matter is introduced.

The Office Action mailed September 25, 2003 rejected claims 3, 10, and 13-15 for indefiniteness under 35 U.S.C. § 112, ¶ 2, claims 1-6, 8, and 10 as obvious under 35 U.S.C. § 103 based on *Rastogi* (US 6,205,449) in view of *Cooper et al.* (US 6,079,000), claims 7 and 9-15 over *Rastogi* and *Cooper et al.* further in view of *Hapner et al.* (US 5,940,827), claim 14 over *Rastogi* in view of *Hapner et al.*, and claim 16 over *Rastogi* and *Cooper et al.* further in view of *Nilsen et al.* (US 5,668,986).

Claims 3 and 14 are amended to correct the informality noted in the Office Action. The rejection claims 10, 13, and 15, on the other hand, for indefiniteness is respectfully traversed. The Office Action states that claims 10, 13, and 15 are indefinite because "claim both an apparatus and the method steps of using the apparatus" and "it is unclear as to which category of subject matter sought or protection." However, claims 10, 13, and 15 explicitly recite a "computer-readable medium," which is an article of manufacture, not an apparatus or a method. Claims 10, 13, and 15 further define, not a method of use, but limitations involving functional descriptive material: "bearing instructions for causing one or more processors to perform the steps of the method according to claim X" by reference to a method claim. See MPEP 608.01(n) III: "The fact that the independent and dependent claims are in different statutory classes does not, in itself, render the latter improper." See also, MPEP 2173.05(p): "There are many situations where claims are permissively drafted to include a reference to more than one statutory class of invention."

The rejection of claims 1-10 over *Rastogi* and *Cooper et al.* (with or without *Hapner et al.*) is respectfully traversed because the references do not teach or otherwise suggest the

limitations of the claims. For example, independent claim 1 recites: "synchronizing a transaction performed on the primary database system based on a number of transactions in the buffer and **a predetermined number of transactions**."

As explained in the Background of the present application, "it is difficult to characterize the amount of the data lost in terms that database owners can best understand. The maximum exposure for loss of data in this approach is usually described in terms of the size of the redo logs, but this information is not helpful for database owners, who would rather want to know how many orders were lost." (¶ 7) However, "[b]ecause the predetermined bound is specified in terms of the number of transactions, the database operator can set a meaningful tradeoff between performance and data availability that is appropriate for the particular needs of the database operator's installation." (Summary, ¶ 11).

The Office Action correctly acknowledges that "Rastogi does not explicitly teach a predetermined number of transactions" (p. 3). In fact, *Cooper et al.* too fails to show "synchronizing a transaction ... based on ... a predetermined number of transactions." Rather, *Cooper et al.* at best characterizes the amount of data loss in terms of size, thereby exhibiting the problems of the system described in the Background that the invention recited in independent claim 1 addresses. Specifically, *Cooper et al.*'s parameter relates to the block size of the audit host memory **342** which is given in terms of a "predetermined number of address locations within audit host memory **342**" (col. 12:39-40), but not "a predetermined number of transactions" as recited in claim 1.

As for dependent claims 7 and 9 as well as claims 11-16, the use of the non-analogous *Hapner et al.* does not support the rejection. *Hapner et al.* relates to techniques for maintaining a database cache in conjunction with a persistent database portion and uses a "transaction counter" (col. 3:44) for keeping track of how many open transactions are in the database cache **140**.

Hapner et al. lacks any disclosure of using such a "transaction counter" for any set of "transactions to be sent to a standby database system." As argued above, neither *Rastogi* nor *Cooper et al.* do anything with number of transactions to be sent to a standby database system, so there is no motivation to modify *Rastogi* and/or *Cooper et al.* to count something none of the references seem to care about.

Synch. of Data at 3, line 15.

Nilsen et al., applied only against claim 16, does not furnish the disclosure missing in *Rastogi*, *Cooper et al.*, and *Hapner et al.*

Therefore, the present application, as amended, overcomes the objections and rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at 703-425-8516 so that such issues may be resolved as expeditiously as possible.

Respectfully Submitted,

DITTHAVONG & CARLSON, P.C.

12/29/2003
Date

Stephen C. Carlson
Attorney/Agent for Applicant(s)
Reg. No. 39929

10507 Braddock Rd
Suite A
Fairfax, VA 22032
Tel. 703-425-8516
Fax. 703-425-8518